

Comments on Draft 2018 BAAQMD Cost Recovery and Containment Report and Proposed Amendments to Regulation 3: Fees

WSPA Comments dated March 21, 2018

Comment 1: WSPA asks that the Air District track refinery costs and revenue.

Response 1: Refinery operations cover multiple device types and fee schedules. The Air District tracks revenue by sites, devices and fee schedules, whereas labor and other costs are tracked using 48 distinct billing codes for different device types. Additionally, the Air District is committed to reviewing how it could improve its current tracking by staff training, enhancing or refining its tracking system and by looking at how better to account for time billed to “general” billing codes.

Comment 2: WSPA requests that the Air District should code and track costs for specific programs.

Response 2: The Air District currently codes and tracks costs for specific programs and source types. For example, the Air District tracks costs for processing renewals in Program 502 where data on which to base the renewal is collected from the facility and used to calculate the cost of the permit. Costs to inspect facilities are tracked in Program 403, where there are requirements for scheduled inspections. Costs associated with applications are tracked in Program 501. Other activities like source testing have their own specific programs and codes.

Comment 3: WSPA comments that the Air District has more staff than 32 of the 34 local air districts and the Bay Area has better air quality.

Response 3: The Air District regulates over 20,000 stationary sources in the nine-county region which requires a large engineering, rule development, planning, climate protection, and compliance and enforcement staff. The Air District maintains and operates air monitoring stations throughout the air basin and maintains its own laboratory. The Air District awards over \$60 million in grants for mobile source emission reductions and actively participates in community outreach and public engagement activities. The Air District is committed to improved air quality and has started a new Technology Implementation Office. The staffing level required for all these activities is appropriate.

Comment 4: WSPA requests that staff should minimize unnecessary work efforts related to prepare guidance on rule/policy requirement and regulatory mandates.

Response 4: The Air District disagrees that these efforts are unnecessary. Guidance on rule and policy requirements are how the Air District provides certainty for the regulated community, public and its staff on how various mandates will be implemented. This comment conflicts many previous WSPA comments regarding the need for certainty and transparency regarding how rules, regulations and policies will be implemented at the Air District. The Air District

believes that the development of clear and appropriate guidance is a significant and necessary step that it intends to continue as it rolls out future regulatory and policy mandates.

Comment 5: WSPA agrees with the Report that the Permit General – 08 billing code should be parsed out with more specificity and would like to know how this evaluation was done.

Response 5: The current method of cost allocation for the Permit General - 08 billing code is for labor to be apportioned across all schedules, based on the proportion of direct labor in the schedules. This basis is currently under review based on the recommendations of the Air District's most recent cost-containment study. The Air District continually makes efforts to diminish the use of billing code 08 in favor of schedule-specific codes and is committed to reviewing how changes could improve cost tracking in this area.

Comment 6: WSPA asks for a clearer delineation between direct costs and indirect costs and questions the assignment of labor for settlements under the Litigation program as an indirect cost.

Response 6: Indirect costs are clearly delineated by the Matrix study under Item 2 – Cost Allocation Plan, Cost Allocation Description starting on page 5. Labor costs associated with settlements that are not related to permitted sources are included in the Litigation program and are allocated as indirect because the entire Air District receives the benefit from these efforts.

Comment 7: WSPA asks whether the total cost and total revenue at the bottom of the tables on pages 2 and 25 reflect total Air District or not.

Response 7: Only the stationary source regulatory program costs are addressed in the report. The only non-permit fee related costs are the indirect costs, which are apportioned across all fee schedules as seen on page 25.

Comment 8: WSPA notes that the report does not contain a definition of “reasonable” cost of service.

Response 8: The Air District's “Reasonable” cost definition comes from California State Law, Government Code 66014(a). The Air District's cost recovery goal is 100%.

Comment 9: WSPA requests clarification on the Air District's costs associated with Fee Schedule D.

Response 9: The Air District costs reflect the work necessary for permitting and inspection activities of the approximately 2,500 individual gas dispensing sources in the Bay Area. Schedule D also includes bulk plant and terminals that require annual permitting and source testing by the Air District.

Comment 10: WSPA requests to know why Schedule M fees are not included in Table on pages 2 and 25.

Response 10: Fees collected under Schedule M are distributed among and are included in Schedules B, C, D, F (G1-5), I and K. The Matrix report shows only the totals of the fee schedule revenue, not the components. The Schedule M component is shown in in the 2018 Cost Recovery Study Figures 2 and 3 which are posted on the Air District's website (http://www.baaqmd.gov/~media/dotgov/files/rules/regulation-3/documents/20180327_costrec_0300-pdf.pdf?la=en). .

Comment 11: WSPA wants to know why the Air District incurs \$4 million in costs for Schedule L – Asbestos Operations when other parties are paying for the asbestos remediation/removal.

Response 11: Each asbestos job requires a notification, administrative processing and the presence of an inspector to ensure compliance with regulations - each of which has associated costs. The Air District is recovering the costs for this fee schedule.

Comment 12: WSPA wants to know why the Air District incurs \$502,547 in costs when zero community air monitors have been installed.

Response 12: The Schedule X costs are associated with the evaluation of existing monitors and planning, siting evaluation, and program design for new monitors. For example, Air District staff held four public workshops (Richmond, Martinez, Rodeo and Benicia) to work with communities near the refineries to implement the Regulation 12-15 monitoring. Additionally, work on the design, siting, engineering and negotiation for monitoring sites is ongoing.

Comment 13: WSPA requests the costs associated with unnecessary permit applications to determine permitted/exempt status.

Response 13: It is the Air District's function to determine whether the applicant's project requires a permit or is exempt. A request for a permit application is made when an applicant has a non-routine project where the engineer needs more information about the project to determine if a letter of exemption is sufficient or a permit is required. The application process is the regulatory mechanism used to obtain sufficient information to determine whether a project requires a permit and allows for cost recovery of staff's time to review these applications. The applications also allow for greater transparency in the permitting process with the public.

Comment 14: Due to the new Regulation 2-5 trigger levels passed in December 2016, WSPA commented that work on additional HRA's will result in little benefit.

Response 14: The Air District disagrees. Toxic Best Available Control Technology will be required more often with OEHHA's new modeling guidelines. The Air District believes that public health will be better protected via the reductions that are achieved from additional HRA's that require facilities to reduce toxic emissions.

Comment 15: WSPA requests clarification on how Penalty Fines are handled in cost recovery.

Response 15: They are not included in the cost recovery calculations. They are not permanent nor expected components of fee revenue.

Comment 16: WSPA requests that the Report clearly identify the time period that the Report is addressing.

Response 16: The cost recovery report was based on cost data for fiscal year ended June 30, 2017.

CCEEB Comments dated March 20, 2018

Comment 1: CCEEB requests that the Air District align the proposed amendments to Regulation 3 with the associated FYE 2019 proposed Budget. They are concerned that the deadline to submit comments on proposed Regulation 3 comes before the Air District's proposed Budget will be made available for review.

Response 1: The proposed amendments to Regulation 3 and the proposed FYE 2019 Budget are interlinked and worked on simultaneously. Air District staff follow a consistent practice of determining fee increases in the context of cost recovery and budgeting on an annual basis. The Air District staff anticipate costs and propose the budget and necessary fees increases accordingly. The Fee Workshop comments were due on March 21st. Comments on the April 18, 2018 Board Hearing materials may be submitted until May 9th.

Comment 2: CCEEB asks that the Air District place greater focus on cost containment and consider performance-based budgeting practices. CCEEB expressed concern that the facilities able to use the Production System are furthest from full cost recovery and that the system may never be applicable to many of the Air District's complex facility permits, which provide the majority of the Air District's fee-based revenue.

Response 2: As more of the facilities in the Production System utilize the on-line features, cost recovery and containment will improve. We will be incentivizing these facilities to complete all transactions with the Air District online as part of the upcoming budget cycle. CCEEB's assertion that the Air District's Production System will not be applicable to complex facilities is erroneous. The Air District is currently working on a complex facility portal to transition the larger facilities online over the next 2 to 3 years.

Comment 3: CCEEB requests that there be greater transparency on which fee schedules are elected for fee schedule increases and recommends strict adherence to the existing fee increase methodology.

Response 3: The proposed fees are based on the "2018 Cost Recovery Study", which averages the cost recovery over a three-year baseline. This has been our standard procedure since 2012.

It is not based on the one-year cost recovery calculated in the Matrix Cost Recovery and Containment Study. Schedule V was reduced from the recommendations on the advice of staff who handle open burn notifications which are primarily from public agencies such as fire departments and public land use areas,

Comment 4: CCEEB comments that Schedule Y is premature and should be postponed until the AB 617 program is more developed.

Response 4: The Air District will not be proceeding with proposed Schedule Y this fiscal year.

Comment 5: CCEEB appreciates that the Budget and Finance Committee will hear both the proposed amendments to Regulation 3 and the proposed Budget at its March 28th committee meeting.

Response 5: The proposed amendments to Regulation 3 and the proposed FYE 2019 Budget were presented and discussed at the March 28th Budget and Finance Committee Meeting. The first Hearing date for Regulation 3 will be on April 18, 2019 at the Board of Director's Meeting. The final Hearing for Regulation 3 and the adoption of the FYE 2019 Budget are scheduled for June 6, 2019.

Comment 6: CCEEB states that their request for an extension of the written comment due date was denied by staff.

Response 6: CCEEB was encouraged to submit before the due date but was informed that a later submission would also be considered. CCEEB was also informed that formally, there are two Board Hearings planned on the proposed amendments to Regulation 3, where they could submit oral or written comments (April 18, 2018 to receive testimony only and June 6, 2018 to consider adoption).

Comment 7: CCEEB supports the work of the Air District on cost recovery and containment and thanks the staff for the opportunity to comment.

Response 7: The Air District appreciates the comments and input submitted by CCEEB.

Comment 8: CCEEB seeks to more fully understand, given the passage of AB 398, how Schedule T will be used for certain climate programs.

Response 8: Schedule T fees, alongside the Air District's non-fee-related revenue, are used to support all Air District climate change activities, which are continuing to grow and can be found in the Air District's 2019 proposed budget.

Comment 9: CCEEB wishes to work with the Air District on securing sustainable and equitable long-term funding sources for the Community Air Protection Program implementation costs.

Response 9: The Air District is investigating funding sources for this important work and appreciates CCEEB's support.

Comment 10: CCEEB requests to see the total cost and revenue associated with Schedules M, Q, and U.

Response 10: Fees collected under Schedule M are included in Schedules B, C, D, F (G1-5), I and K. The Matrix report shows only the totals of schedule revenue, not the components. Schedule M components may be seen in the 2018 Cost Recovery Study which will be posted on the Air District's website. Schedule Q (Excavation of Contaminated Soil) revenue has not been collected for over 10 years since other agencies are now responsible for permitting and inspection. Schedule U (Indirect Source Review) revenue has not been collected since it was proposed in 2009.

Comment 11: CCEEB would like to understand how the proposed temporary incentive for transactions using the production system would be implemented.

Response 11: At this time, the Air District staff is considering a variety of ideas on how the proposed temporary incentive would be implemented. One of these ideas would be to reduce the Permit Renewal Processing fee for facilities that renew online using the Production System.

Comment 12: CCEEB believes that under-utilization of the Production System could be addressed through better public communications and outreach to the regulated community. The benefits to end users of the system should be incentive enough to move to the electronic based system.

Response 12: In upcoming fiscal year, the Air District will incentivize the facilities to complete the permit renewal process in the Production System by utilizing proposed Section 3-418. The Air District has delayed the full implementation of the Production System for small sources until it has upgraded its financial system. The financial system project has recently been completed and the Air District is now concentrating on upgrades to its online payment systems including E checks and credit payments. Once these enhancements are complete, the Air District will be working to transition 100% of small facilities to the online NPS environment over the next two years.